$150,000.00 was favourable to the beneficiaries, was rendered difficult.

We do not agree with the submission that the agreement has already lapsed in view of the proviso in clause 2 which reads: –

"... PROVIDED THAT should the said Order approving the sale and transfer of the said lands be delayed, this Agreement shall still be in force."

We read the order as referring to delay by the Court in approving the sale and transfer and not delay by any of the parties to the agreement. However in the absence of arguments on the legality or otherwise of the proviso, we feel justified in concluding as the learned judge has done, that the appellants are also responsible for the inordinate delay and have themselves to blame for it.

Further, the doctrine of equitable estoppel as propounded in *Amalgamated Investment & Property Co. Ltd (in liquidation)* v. *Texas Commerce International Bank Ltd.*[5] does not apply. This is not a case where the administrators had stood by and allowed the appellants to incur expenditure in clearing the said land and paying quit rents and assessments or otherwise to act in the mistaken belief as to their rights over the said land, in view of the fact that it was well within their knowledge that the sale was subject to the approval of the Court as expressly provided in clause 1 of the agreement. Nor can it be said that the appellants had been influenced by any representation or encouragement on the part of the administrators into taking possession of the land and incurring such expenditure.

The appellants have now made a counter-offer by increasing the purchase consideration to $250,000.00, a sum slightly above the price quoted in the valuation report in 1973. Since then according to the submission of the learned counsel for the respondents, the price of the said land has increased tremendously to about $3,000,000.00 and the beneficiaries are prepared to purchase the said land at a reasonable price. No doubt there was no proper valuation of the land as at the date of hearing of the application and the beneficiaries had not made any quotation of their offer. Be that as it may, there is no reason to doubt that the value of the said land is very much more than that in 1973. The appellants' counter-offer is thereby rendered unreasonable and unfavourable to the estate as a whole.

For the reasons stated above we dismiss the appeal. There is to be no order as to costs.

Appeal dismissed.

Solicitors: *Skrine & Co.; K.C. Loke & Co.; Sheikh Salim, Wong & Co.; Philip Choong & Co.*

SETALI DEVELOPMENT SDN. BHD. & ANOR. v. LIM YOU KENG

[F.C. (Wan Suleiman, Mohamed Azmi & Hashim Yeop A. Sani F.JJ.) September 10 & October 19, 1983]

[Johor Bahru – Federal Court Civil Appeal No. 72 of 1982]

Practice & Procedure – Appeal – Application to have appeal dismissed – Application in Chambers adjourned to open court – Order made in open court – Leave for appeal not required – Whether notice of appeal filed within time – Computation of period of one month – Interpretation Act, 1967, s. 54(1)(a) – Rules of the Federal Court 1980, r. 56 – Courts of Judicature Act, 1964, s. 68(2).

In this case the appellants had filed notice of appeal against a mandatory injunction granted by the learned Judicial Commissioner, Muar. The respondents applied for an order that the appeal be dismissed on the grounds that the appellants had failed to comply with provisions of section 68(2) of the Courts of Judicature Act, 1964 and Rule 56 of the Rules of the Federal Court, 1980. It was alleged (1) that the application for leave to appeal had not been served on the respondent or his solicitors and (2) that the notice of appeal was filed out of time.

Held: (1) as the case had been ordered to be heard in open court and the order expressly stated that it was an order made in open court no leave for appeal was required under section 68(2) of the Courts of Judicature Act, 1964;

(2) since the order appealed against was made on February 28, 1982 the period of one month under rule 56 of the Rules of the Federal Court, 1980 runs from March 1, 1982 (the day when the order was made being excluded under section 54(1)(a) of the Interpretation Act, 1967). The "month" means the calendar month ending on the same date as it commenced on the previous month and therefore since the order was made on February 28, 1982 the notice of appeal in this case filed on March 29, 1982 was well within time.

Cases referred to:

(1) *T.O. Thomas* v. *K.C.I. Reddy & Anor* [1974] 2 M.L.J. 87.

(2) *Migotti* v. *Colvill* (1879) 4 C.P.D. 233.

(3) *Marren* v. *Dawson Bentley & Co. Ltd.* [1961] 2 All E.R. 270.

FEDERAL COURT.

S.C. Loh for the appellants.

Karpal Singh for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani F.J. (delivering the judgment of the Court): This is a Notice of Motion taken out by Mr. Karpal Singh, counsel for the respondent in an appeal against a mandatory injunction granted by the learned Judicial Commissioner, Muar. The Notice of Motion seeks for an order to have the appeal dismissed with costs on the grounds that the appellants had not complied with the provisions of section 68(2) of the Courts of Judicature Act, 1964 and rule 56 of the Rules of the Federal Court 1980.

For convenience the provisions of the said section 68(2) and rule 56 are reproduced below:–

"Section 68(2) of the Courts of Judicature Act 1964 – No appeal shall lie from an order made by a Judge of the High Court in Chambers unless the Judge has certified, after application, within four days after the making of the order by any party for further argument in court, that he requires no further argument, or unless leave is obtained from the Federal Court or from a Judge of the High Court."

"Rule 56 of the Rules of the Federal Court 1980 – No appeal shall, except by leave of the full Court, be brought after the expiration of one month –

(a) in the case of an appeal from an order in Chambers, from the date when such order was pronounced or when the appellant first had notice thereof;

(b) in the case of an appeal against the refusal of an application, from the date of such refusal;

(c) in all other cases, from the date on which the judgment or order appealed against was pronounced."

With regard to the allegation of non-compliance of section 68(2) of the Courts of Judicature Act 1964, two grounds were raised. The first ground was as set out in the affidavit of Mr. Karpal Singh and that is that the application for leave of the High Court had not been served on the respondent or his solicitors. A short answer to this would seem to be simply that section 68(2) of the Act does not say that the application for leave must be served as a condition precedent for an order and that no leave would be granted in the absence of such service. In any case the application for leave in this case was made *ex-parte* and there was no direction for service made by the learned Judicial Commissioner. Counsel for the respondent did not seem to pursue this ground seriously but much argument was however focussed on the appellants' contention that there was in fact no necessity to apply for leave at all in this case because the order appealed against was made in open Court and not in Chambers although the subject matter originated from an application in Chambers. For convenience Order 32 Rule 11 of the Rules of the High Court, 1980 is reproduced below:–

"11.(1) The Judge in Chambers may direct that any summons, application or appeal shall be heard in Court or shall be adjourned into Court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in court by virtue of a direction under paragraph (1) may be adjourned from court into Chambers."

It was the contention of the appellants that leave was applied for in this case out of caution as the solicitors for the appellants were not absolutely certain whether the order of the Judicial Commissioner dated February 28, 1982 was to be regarded as an order made in open court although it is clearly stated at the top of the order to be an order in open Court. This uncertainty is understandable because of the difficulties encountered in the interpretation of the previous Order 54 Rule 22 of the old Supreme Court Rules 1957.

Section 68(2) of the Courts of Judicature Act 1964 and Order 54 Rule 22A of the old rules attracted diverse opinions in the superior court. See *T.O. Thomas* v. *K.C.I. Reddy & Anor.*[1] The problem was further compounded by the word "interlocutory" in the old section 68(2) of the Courts of Judicature Act. The position at present has been made somewhat less complicated firstly by the amendment to section 68(2) of the Courts of Judicature Act which deleted the word "interlocutory" and secondly by the re-enactment of the new Order 32 Rule 11 of the new Rules of the High Court, 1980. But apparently the spectre which haunted the old Order 54 Rule 22 and Rule 22A has not totally disappeared and this obviously caused the uncertainty of the appellants when the application for leave was made to the learned Judicial Commissioner.

A careful reading of the former Order 54 Rule 22 and Rule 22A and the present Order 32 Rule 11 would show that the order of the learned Judicial Commissioner (pg. 907 of the Appeal Record) is an open Court order and expressly stated as such in the order itself. The present Order 32 Rule 11 of the Rules of the High Court, 1980 is a direct copy of the English Order 32 Rule 13(1)(2) of the Rules of the Supreme Court 1979. Prior to the enactment of the Rules of the High Court, 1980 all decisions in open court on a subject matter which originated from Chambers shall under Order 54 Rule 22 of the Rules of the Supreme Court 1957 be deemed to be a decision in Chambers. Such deeming provision is absent in the present Order 32 Rule 11 of the Rules of the High Court, 1980. There is thus a clear dichotomy now be-

tween orders in Chambers and orders in open court in the new rules.

It is stated at pg. 516 of the English *Supreme Court Practice* 1979 Vol. I that –

"The term "Chambers" is not defined by the R.S.C. but is used in contrast to the term "Court" (see Rules 13 & 20, infra). In fact applications and proceedings in Chambers are conducted before a court sitting in private, more often before a Master or Registrar but occasionally before a Judge, and only the parties and their representatives are entitled to be present. The true distinction is between the Court sitting in Chambers, i.e., in private and the Court sitting in open Court, i.e., in public, though in the latter case the court may in a proper case exclude the public so as to sit in camera (cf. Administration of Justice Act 1960, section 12, Vol. 2, Part 9A, infra.)"

Again at pg. 527 the following note appears:–

"When a Judge adjourns a Chambers summons into court under this Rule, and does not direct that it is to be heard in court as Chambers, the matter is in court for all purposes and is open to the Press."

There should not be any doubt arising from the expression "Judge in Chambers" appearing in Order 33 Rule 11(1) of the Rules of the High Court, 1980 and the expression "Judge of the High Court in Chambers" appearing in section 68(2) of the Courts of Judicature Act 1964. The latter expression clearly means a Judge of the High Court while sitting in Chambers.

In this case the learned Judicial Commissioner directed the parties to have the case heard in open court under Order 32 Rule 11(1) and after hearing the matter in open court gave the order which also expressly states that it is an order made in open court. There is therefore no argument in this case that no leave was required under section 68(2) of the Courts of Judicature Act 1964.

The other point taken up in the Notice of Motion was the alleged non-compliance of Rule 56 of the Rules of the Federal Court, 1980 in that the notice of appeal was allegedly filed out of time. Arguments on this point went off at a tangent due probably to the confusion between definition and computation. The Courts of Judicature Act 1964 was revised in 1972. According to section 2(1)(b) of the Interpretation Act 1967 that Act shall apply for the interpretation of all laws revised under the Revision of Laws Act 1968 whether the laws were enacted before or after the commencement of the Interpretation Act. Therefore it is clear that the Interpretation Act 1967 applies to the Courts of Judicature Act 1964 (revised) including any rules made thereunder. The order under appeal was made by the learned Judicial Commissioner on February 28, 1982. The notice of appeal was filed on March 29, 1982.

According to section 54(1)(a) of the Interpretation Act 1967 "a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done." Under Rule 151 of the Rules of the Federal Court 1980 the word "month" shall be computed by calendar month according to the Gregorian calendar. The phrase "calendar month" has been judicially considered in many authorities but we need only mention *Migotti* v. *Colvill*[2] where it was held that "a calendar month is a month which ended on the same date as it commenced on the previous month." Brett, L.J. in that case puts the principle clearly as follows at pg. 238:–

"I am of opinion that the term a calendar month is a legal and technical meaning. The meaning of the phrase is that, in computing time by calendar months, the time must be reckoned by looking at the calendar and not by counting days."

See also *Marren* v. *Dawson Bentley & Co. Ltd.*[3] Thus for example if an act is to be done within one month from January 15, the last date for doing the act is February 15 – see Note 2 Order 3 at page 12 of the English Supreme Court Practice 1979 Vol. 1.

Since the order appealed against was made on February 28, 1982 the period of one month under Rule 56 of the Rules of the Federal Court 1980 runs from March 1, 1982. The notice of appeal filed on March 29, 1982 was therefore filed well within time.

For the above reasons the motion is dismissed with costs. The appeal can now proceed on the merits.

Motion dismissed.

Solicitors: *Joseph Tan & Tang; Karpal Singh & Co.*